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THE AUTONOMY PRINCIPLE IN ITALIAN REGIONALISM

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INDEX

1. INTRODUCTION

Regionalism had been considered as an institutional, political imbalance cause since the Risorgimento age. The reasons had been the fear of a potential damage of the national unity and especially the strong diffidence by the political parties towards models than cannot be controlled by the State.

In fact, it is to be recalled the intense debate on the model of State that the Constituent Assembly had to adopt (1946-1947), the long time necessary in order to achieve the regionalism system (1948-1970) and the long period of the «regionalism without a model»[1] (1971-1998). Currently (1999-today), regionalism is still an undefined entity[2]. It is still looking for a valuable model: that is quite evident because, after constitutional reforms in 1999 and 2001, the need of unity and the decisions of the constitutional Court have progressively justified an increased centralization of competences.

2. FROM "RISORGIMENTO AGE" TO STURZO'S PROJECT

1. The idea of autonomy originates from "Risorgimento age", during the period of unification of the State.

[1] See M. LUCIANI, *Un regionalismo senza modello*, *Le Regioni*, 1994, 131 ss.

[2] According to G. FALCON (*Dieci anni dopo. Un bilancio della riforma del Titolo V*, *Le Regioni*, 2011, 249), today, like yesterday and more than yesterday, regional right is a science of initiation.

For instance, Giuseppe Mazzini, both used to contrast federalism and to affirm Regions needed to be recognized by the Italian system. The importance of achieving a unitary State, in which all the territorial differences are taken into consideration, was also underlined by Cavour, who was in charge as prime minister in 1860.

The same opinion was shared by Farini, then by Minghetti (Farini's successor at home office). In 1861, Minghetti introduced some bills on regional administration. However, these drafts weren't really successful.

At least in this first period, regionalism was considered as a decentralization instrument and not as an instrument towards an effective autonomy. It was also seen as a useful way to coordinate and put together all the pre-unification States[3].

Differently from Mazzini, in 1860 Carlo Cattaneo stated that each Region of Italy properly is not an administrative system, but it involves a complete legislative "building"[4].

Cattaneo, who had a positive opinion on autonomy and on territorial differentiation, affirmed that a federal State was the only instrument able to guarantee a full exercise of freedom against any centralized and bureaucratic tendency.

Giuseppe Ferrari added a federal solution according which it was impossible to realize a unitary system, since only federation would have given value to the different Regions. Federation would have been possible only thanks to a social revolution of farmers[5].

[3] For more details, see R. RUFFILLI, *La questione regionale dall'unificazione alla dittatura*, Giuffrè, Milano, 1971.

[4] C. CATTANEO, *L'ordinamento del regno,* taken from the preface of "Il Politecnico", vol. IX, luglio 1860, now in G. GALASSO (edited by), *Antologia degli scritti politici di Carlo Cattaneo*, Il Mulino, Bologna, 1962, 148.

[5] G. FERRARI, *La Rivoluzione e i rivoluzionari in Italia*, F. DELLA PERUTA (edited by), Univ. economica, Milano, 1952, 9-10.

2. Before Sturzo, few people had considered Regions as autonomous entities; they were just considered as administrative subjects.

Generally, Regions were supposed to be mere bureaucratic, hierarchical, or at least self-sufficient instruments of decentralization.

Regarding bureaucratic decentralization, it can be seen as a relocation of some deliberative competencies from the central to the local system. In this case, some functions that are granted to the State are shifted to a peripheral power that is likely to be more able to satisfy the local needs[6].

Self-sufficient decentralization is completely different: it involves a relocation of administrative functions from the State to Regions and local entities, which are going to be fully responsible for their elections.

According to Zanobini's opinion, the concept of self-sufficient decentralization involves the capacity up to the legal personality, whose interests are suitable with to some interests of State, to exercise an administrative activity, which has the same nature and the same effects of the State public administration[7].

3- Trying to establish a date when regionalism was born, the speech given by Don Luigi Sturzo in Venice on 23rd October 1921 during the third national Congress of Popular Italian Party is to be quoted[8]. He focused three crucial issues for regionalism: administrative decentralization, reform of local autonomies, and creation of Regions.

[6] C. VITTA, *Il regionalismo*, Soc. An. Ed. La Voce, Firenze, 1923, 5-6.

[7] See G. ZANOBINI, *L'amministrazione locale*, Cedam, Padova, 1935, 139.

[8] See L. STURZO, *Il Partito Popolare Italiano*, I, Zanichelli, Bologna, 1956, 194-231.

These three aspects were at the heart of Sturzo's political program, that was meant to find a new entity, no more only self-sufficient, but also autonomous and able to carry out a governmental and legislative action regarding its own matters, financially autonomous and directly elected by citizens.

Consequently, Region would have been considered as a real *summa* of local collective interests, consisting of an elective-representative entity. In other words, it would have been characterized by universal and direct suffrage elections with the proportional method; it would be completely autonomous-self-sufficient and administrative-legislative, able to make law and rules in its territory.

3. CONSTITUENT PERIOD

After the collapse of fascism, regionalism became the main topic of the Italian political debate and the essential aspect of all antifascist programs. These programs used to consider Region as an important way to rebuild the State in a democratic form.

Gaspare Ambrosini tried strongly supporting regionalism, analyzing it on legal and not only political base (as his predecessors did).

However, the passage from the previous centralized State to a social State of autonomies wasn't declining at all. This happened even when the Second Subcommittee in the Constituent Assembly, which debated the constitutional organization of State in 1946, took the hard decision concerning the model of State. Surely, extreme federal and

confederal proposals would have been introduced and somebody would have suggested to abolish each form of autonomy[9].

Only after a long debate, the Second Subcommittee approved the well-known Piccioni's Agenda. Thanks to him, all the characteristics of the Region model had been defined. It was meant:

1) as a self-sufficient entity equipped with its own regional objectives; it is able to manage all the administrative activity to achieve these objectives;

2) autonomous: equipped with legislative and regulatory powers as regards its competences, by sticking to the State legal order;

3) representative of local interests (direct universal suffrage);

4) equipped with sufficient financial autonomy.

However, despite of the efforts made by people pro-regionalism, especially Ambrosini, the Constituent Assembly disrupted the original project by rejecting Regions and disagreeing with the "autonomous opinion".

Consequently, the committee designed a project not particularly autonomous from a legislative point of view, but from an administrative and financial one. The regime established in "Titolo V" of Constitution appeared as a collection of incomplete rules, which needed to be implemented by the Parliament, in the attempt to give rise to a regionalism that remained without a model for long time.

[9] *La Costituzione della Repubblica nei lavori preparatori della Assemblea Costituente*, VII, Camera dei deputati, Segretariato generale, Roma, 1971, 819-894.

4. THE FIRST ATTEMPTS TO ACHIEVE REGIONALISM: 50S-70S

Since the first attempts to implement the "Titolo V" of Constitution (see law 62/1963), the legislator's intention to minimize all the powers of Regions was evident.

Meanwhile, the political environment was quite indifferent to regionalism. Even "Democrazia Cristiana", which had included in its program the "fight" to achieve Regions autonomy thanks to Ambrosini and Amorth, still agreed with regionalism, but realized that the radical change of left parties perspectives would have sanctioned their victory in many Regions in the centre of Italy. Consequently, "Democrazia Cristiana" would have lost much control on important areas all around the country.

Left parties, in fact, sure of their victory in the centre of Italy, used to consider those territories as potential sites to establish their government, instead of the Capital that was inaccessible. This is why politicians pro "Democrazia Cristiana" used to have a wait-and-see approach; they wanted to approve a group of laws that would have conferred to the Regions a typical administrative nature, by shrinking them in a strict web of checks and limitations.

In the 50s-60s, the idea of autonomy started overlapping firstly with the problem of the structure of institutions, then with the problem of the agreements between parties. These obstacles would have certainly weakened the debate on Regions.

Regional councils, finally elected on 7th – 8th June 1970, immediately regional Statutes approved.

However, this situation did not really solve the functioning problems of these new subjects: they in fact needed some specific decrees to transfer all functions, offices and staff.

These decrees were promulgated on 14th-15th January 1972. They enabled Regions to execute administrative functions in the following matters: municipal districts and local police, mineral waters, caves and bogs, educational assistance, museums and libraries,

healthcare, transports, tourism, hospitality industry, fairs and markets, urban planning, viability and expropriation, public charity, professional and craft education, agriculture, hunting and fishing.

This transfer created lots of discussion among people pro regionalism.

Only after repetitive custom complaints, which were meant to obtain some financial aids that were essential to execute the political address of each Region, "d.p.r." n. 6/1977 was adopted. For at least 20 years it proved to be the fundamental text[10], even more than article 117 of Constitution, as regards to the distribution of powers between the State and the Regions.

This document firstly realized a transfer of administrative functions to the Regions, by putting together the entire set of competencies previously divided into 4 different matters by Constitution: administrative arrangement and organization, social services, economic development, urban planning.

Here we were at the start point of regionalism that began to operate a decentralization of functions after a long period of debates.

[10] See M.S. GIANNINI, *Prefazione*, in A. BARBERA, F. BASSANINI, *I nuovi poteri delle regioni e degli enti locali*, Il Mulino, Bologna, 1978, 7.

5. THE CONNECTION BETWEEN STATE AND REGIONS IN THE OLD "TITOLO V" OF CONSTITUTION

1- As stated above, Regions started to operate during the 70s. Since then to the second half of 90s, the main problem consisted of a lack of connection instruments and coordination provisions towards both ordinary legislation and administrative policy too.

Constitutional Court was constantly up to smooth out all the relationships among State and Regions. It caught the mechanism of closure of the entire system in the clause of national interest (article 117: Regions would have been allowed to adopt legislative rules as regards to specific competencies provided that they wouldn't have been in contrast with national interests and interests of other Regions).

In particular, what was worthy to be considered as national interest was defined by the State, both by general and detailed norms and sometimes in contrast with Constitution. Conversely, Regions would have adhered to the State rules in favor of national interests.

In this way, judges had meanwhile transformed the national interest from a national limitation to an assumption of legitimacy of regional laws[11], by subtracting it from the judge by the Parliament. This is why Regions, at least until the reform of "Titolo V" of Constitution, were established as purely administrative subjects.

2- Among all the strategies to shrink the legislative competencies of Regions, an important role was performed by the State function of "indirizzo e coordinamento" of all regional activities, certainly one of the most evident ways to show national interest in this complex model of Italian autonomy.

It consisted of an instrument able to be an internal limitation to single competencies of regional interest, thought as a unitary regulatory scheme allowed to

[11] R. BIN, *Legge regionale*, *Dig. disc. pubbl.*, IX, Utet, Torino, 1994, 188.

guarantee the connection between State and Regions as regards to all competencies designed by article 117 of Constitution[12].

Moreover, according to the constitutional Court, it was an essential instrument to guarantee a uniform direction, in case either of unitary necessities that needed to be coordinated or of sacrificing regional interests.

However, this function would have disappeared later, because of constitutional laws in 1999 and 2001 (see par. 6).

3- A further strategy of flexibility between State and Regions involved substitutive powers, which were aimed to prevent the prejudice that the regional administrative inertia could have brought either to the protection of main values or to the achievement of common objectives.

In fact, since 1972, constitutional Court had been complaining about the lack of substitutive powers, which would have let the State to exceptionally replace helpless or failed Regions as regards to the actuation of the EU duties.

However, once it had been approved, this normative replacement lost quite soon its exception character and it progressively transformed into the most updated product of the opening State supremacy towards regional autonomies[13].

4- Finally, it is important to remember a further turning point as regards to the previous system, as follows: the "norme cedevoli".

[12] See F. PIZZETTI, *Autonomia della Regione e funzione di indirizzo e coordinamento*, AA.VV., *Contributi allo studio della funzione statale di indirizzo e coordinamento*, Ministero dell'interno, Roma, 1978, 73.

[13] See P. CARETTI, *Il potere sostitutivo statale: un problema di garanzie procedurali o sostanziali per l'autonomia regionale?*, *Le Regioni*, 1990, 1857.

It is of a doctrinal mechanism[14] through which the State, in order to prevent any normative lacks in regional legislations as regards to shared competencies, could not only establish precept rules, but also tractable detailed arrangements, which would have later failed when Regions would have decided to apply their own attributions.

However, still in this case, once this praxis had been approved, the legislator, supported by the constitutional Court, began to misuse it, by shrinking regional autonomies.

6. THE AUTONOMY PRINCIPLE AFTER CONSTITUTIONAL REFORMS IN 1999-2001

1- Limitations of that system emerged during the 90s, when the organization of relationships between State and Regions started to be considered, thinking that regional competencies needed to be extended and that is was essential to prevent the State from obtaining further competencies.

Once the experiment of the bicameral boards (1993- De Mita-Iotti / 1997- D'Alema), which had to achieve the reform of the second part of Constitution, failed, the aim of reallocate all competencies was still carried out through some ordinary laws.

We are talking about "Bassanini's laws", involving lots of devolution to the government in order to transfer functions to the Regions, for the reform of public administration and, finally, for the administrative simplification. Particularly, we refer to

[14] See L. PALADIN, *Diritto regionale*, Cedam, Padova, 1979, 96.

the laws n. 59 and n. 127 in 1997, n. 191 in 1998, and some legislative decrees (the most important was certainly n. 112 in 1998[15]).

The logic followed by this reform was deeply innovative and aimed to realize a complete decentralization of competencies to the regional autonomies, without selecting any competencies and guaranteeing to the State some specific functions (public order, defense, foreign affairs…).

According to the contents of these laws (formally legislative, practically constitutional), it was usual to talk about "administrative federalism with unchanged Constitution". In fact, the measures taken into consideration introduced a model of relationships between State and Regions that was really in contrast with the old "Titolo V", to the point that an immediate constitutional reform was expedited (this reform was finally established through constitutional laws n. 1 in 1999 and n. 3 in 2001).

2- These laws have actually cancelled or modified most of the articles that used make up "Titolo V" of Constitution, by redesigning the layout of regional sources and their relationships with the State ones[16].

In particular, this reform has deeply modified the general partition of the competencies between State and Regions by conferring seventeen of them to the State (the list is found in article 117, § 2, of Constitution). These competences would have represented an exception to the general principle of regional competence; a list of shared competencies (article 117, § 3, of Constitution); a federal clause (art. 117, § 4, of Constitution) whose content isn't clear at all.

[15] See G. FALCON (edited by), *Lo stato autonomista: funzioni statali, regionali e locali nel decreto legislativo n. 112 del 1998 di attuazione della legge Bassanini n. 59 del 1997*, Il Mulino, Bologna, 1998.

[16] *Ex plurimis*, see A. RUGGERI, *Le fonti del diritto regionale: ieri, oggi, domani*, Giappichelli, Torino, 2001.

Both the doctrine and constitutional Court have found in article 117 an heterogeneous and varied[17] amount of competencies. A part from some individual clauses that are real competencies, there are some others with a transverse character (concurrency protection, essential levels of performances…), that the Court has progressively redefined by looking at every practical situation, by taking into consideration all the involved interests[18].

In particular, "finalistic competencies" (also known as "value matters", or "matters not matters"), represent some strategies of constitutional engineering specifically created in order to balance the gaps of "Titolo V", through which the State can legitimately expand the exercise of its legislative function also in areas which would formally belong to Regions.

They show the way through which national interest, even if it has been cancelled by the national legislator, has appeared again in our Constitution adopting a different nature.

3- A further instrument of flexibility that the Court has exploited in the last ten years in order to rewrite "Titolo V" of Constitution consists of the "chiamata in sussidiarietà"[19].

Since the well-known decision n. 303 in 2003, judges have stated that, in case of the rise of unitary necessities, even in terms of regional legislative competencies, some State interventions are not to be excluded. This is an actuation of the principle of

(17) See S. MANGIAMELI, *La riforma del regionalismo italiano*, Giappichelli, Torino, 2002, 107 ss.

(18) See A. BARBERA, *La polverizzazione delle materie regionali e la (ormai necessaria) clausola di supremazia*, *Le Regioni*, 2011, 557 ss.; R. BIN, *I criteri di individuazione delle materie*, *ibid.*, 2006, 889 ss.

[19] See C. MAINARDIS, *Chiamata in sussidiarietà e strumenti di raccordo nei rapporti Stato-Regioni*, *Le Regioni*, 2011, 455 ss.

subsidiarity as regards to the legislative function, so that the actuation of the examined criterion from an administrative point of view finally affects legislation too.

It is important to say that the "chiamata in sussidiarietà" always consists of an exception to the layout of competences of State and Regions, even if it is valid only in the following three situations: a) there must be an accurate evaluation of unitary necessities that are subordinate to the State in terms of specific administrative functions; b) this exception must be reasonable; c) the Regions have to been consulted. This agreement between State and Region is a *condicio sine qua non*, so that the principle of subsidiarity can operate dynamically by centralizing some functions that would formally belong to Regions.

4- The decision n. 303 in 2003 has also declared inadmissibility of "norme cedevoli".

These ones, after the reform in 2001, would never be used by the State in terms of shared competences and in terms of residual competence of Regions too[20].

According to the Court, the institute of "norme cedevoli" would survive only if the State would attract administrative functions to satisfy unitary necessities: only in this case the State could intervene through detailed "norme cedevoli" as regards to the concurrent legislation, waiting for the new regional rules.

5- Finally, the reform in 2001 has introduced the mechanism of regulatory replacement (art. 120 of Constitution).

Nowadays it is possible to mention three substitutive powers[21]:

[20] See R. BIN, *L'interesse nazionale dopo la riforma: continuità dei problemi, discontinuità della giurisprudenza costituzionale*, *Le Regioni*, 2001, 1213 ss.

[21] See F. MERLONI, *Una definitiva conferma della legittimità dei poteri sostitutivi regionali*, *Le Regioni*, 2004, 1080 ss.

a) substitutive powers introduced by the State and regional law as regards to delegated administrative functions. Here the subject that delegates keeps the ownership of the function, by replacing Regions in case of inertia;

b) ordinary substitutive powers provided by law and about administrative functions. There is a general interest that the function is carried out;

c) extraordinary substitutive powers of government, as regards to normative acts, to be executed towards Regions and other local autonomies (delegated administrative functions). In this case, it's important to safeguard all the unitary interests that are really essential for the system functioning.

7. SOME CONCLUSIONS

The greatest problem of Italian regionalism is the current gap between Constitution and reality[22], which is represented by article 117 of Constitution.

Thanks to this rule it is possible to realize that a group of competencies have quite flexible contours; they are nearly always allocated to the State, as established by constitutional Court, which created some mechanism to balance some lacks of "Titolo V".

Few and specific competencies are allocated to Regions, so that many regional competencies now actually look like dry branches[23]. Furthermore, the reform attitude has

[22] For more details, see A. CANDIDO, *Confini mobili. Il principio autonomista nei modelli teorici e nelle prassi del regionalismo italian*o, Giuffrè, Milano, 2012.

[23] See G. FALCON, *Dieci anni dopo. Un bilancio della riforma del Titolo V*, cit., 245.

been denied and Constitution, especially in legislative competence, involves some rules that are typical of federal States but actually it has never managed to stick to the real necessities of our society. Consequently, it has not a social acceptance[24].

The fail of regionalism derives from a blocking of Italian politics, so that, according to Roberto Bin, Regions have not even been created by the Constituent Assembly, and they have purely been invented from all points of view, only because of a political necessity. Looking at the uncertain political future of our country, political parties have considered regionalism as a way to guarantee their survival in case of their failure in occasion of political elections[25].

Furthermore, the reform makes the relationships between State and Regions extremely complicated and it has obtained the increase of the constitutional contentious, making the Court able to progressively interpret the text of Constitution[26].

This happened, at the beginning, by conferring to Regions some autonomy, a part from a progressive centralizing process towards the State, thanks to some new instruments that have replaced the old national interest.

From the general layout, it emerges that this centralization process is still prevailing as regards all the following cornerstones of the regional autonomy principles: self-government, self-conferring different functions, normative and financial autonomy. Let us just think about either the failure of the perspective to achieve fiscal federalism or the lack of an efficient government of all the resources, or the weak legitimacy of regional politics.

[24] See T. GROPPI, *Il Titolo V cinque anni dopo, ovvero la Costituzione di carta*, *Le Regioni*, 2007, 428.

[25] See R. BIN, *…e l'autonomia politica? Riflessioni del dopo-elezioni*, in *Le Regioni*, 2008, 244.

[26] See U. DE SIERVO, *Conclusioni*, *Le Regioni*, 2011, 593.

Nowadays it is necessary to reform the system of regional autonomies, especially because of the current economic-financial crisis and the consequent crisis of State and its finances.

Regions should actually be effective and efficient subjects, actively participating to the modernization of our country.

It will be possible to reach this target only in a strong system in which fundamental rights are equally guaranteed to all citizens regardless of the place they live. At the same time, it is necessary to encourage differentiation. All this by being aware that an extremely uniform model would only accentuate the gap between our Regions.